

2

Supreme Court, U.S.
FILED
MAR 12 1987
JOSEPH F. SPANIOLO, JR.
CLERK

NO. 86-1324

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

IN THE MATTER OF
LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN" DEBTOR,

LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN",

PETITIONER.

VERSUS

CLIFFORD F. McMASTER, TRUSTEE

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JOSEPH W. COLVIN
GILBERT & COLVIN
1035 INTERFIRST TOWER
801 CHERRY STREET
FORT WORTH, TEXAS 76102
(817)336-7883

ATTORNEYS FOR RESPONDENT,
CLIFFORD F. McMASTER, TRUSTEE

16 pgs



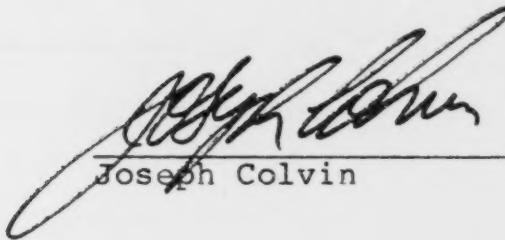
QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Fifth Circuit erred in affirming the judgment of the United States District Court for the Northern District of Texas which denied petitioner's appeal of the United States Bankruptcy Court's Order denying remand?

CERTIFICATE OF PARTIES TO THE PROCEEDING

The undersigned counsel of record for
Clifford F. McMaster, Trustee,
Respondent, certifies that the following
are parties to this proceeding:

1. Lavoyd Wayne "Bill" Hardin
2. Clifford F. McMaster



Joseph Colvin

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Certificate of Parties to Proceeding	ii
Table of Contents	iii
Judgments Below	iv
Statement of Jurisdiction	iv
Table of Citations	v
Statement of the Case	1
Summary of the Argument	1
Argument	3
Conclusion	9
Certificate of Service	10

JUDGMENTS BELOW

FIFTH CIRCUIT APPEALS:

- 84-1037 - judgment of district court
affirmed, 8/22/84
- 84-1250 - dismissed for want of prosecution,
failure to file briefs,
5/22/84
- 84-1396 - appeal dismissed, 9/26/84
- 84-1614 - appeal held frivolous, 12/20/84
- 84-1615 - judgment of district court
affirmed, 12/20/84
- 85-1686 - appeal dismissed, 2/24/86
- 85-1726 - judgment of district court
affirmed, 3/17/86
- 86-1545 - appeal dismissed, 11/20/86

APPEALS TO THE U.S. SUPREME COURT:

- 85-2135 - petition for certiorari denied,
11/17/86

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant
to 28 U.S.C. §1224.

TABLE OF CITATIONS

	Page
<u>Statutes & Regulations</u>	
28 U.S.C. §1452(a)(b)	3
28 U.S.C. §1334(a)(b)(a)	4
28 U.S.C. §2101(c)	7

STATEMENT OF THE CASE

Petitioner's petition for certiorari results from eight (8) previously unsuccessful appeals in the United States Court of Appeals for the Fifth Circuit. The prior appeals bear the following numbers: 84-1037, 84-1250, 84-1396, 84-1614, 84-1615, 85-1686, 85-1726, (Cert. denied U.S. Supreme Court 85-2135) and 86-1545. This petition for certiorari is based on the dismissal of Appeal No. 86-1545. This appeal was from an order denying remand of related proceedings to the state court, from which the related proceedings had been removed pursuant to 28 U.S.C. §1452.

SUMMARY OF ARGUMENT

The petition for certiorari should be denied because petitioner has not

raised any issues attacking the judgment that is the basis for the petition. Instead, he raises matters heretofore considered in prior appeals to the Fifth Circuit, which were decided adverse to petitioner and which no petition for writ of certiorari was filed or if filed was denied, and complains generally about the outcome of every proceeding in which he has been a party throughout the last decade, whether in the Courts of the State of Texas, the United States Bankruptcy Court, the United States District Court for the Northern District of Texas or the United States Court of Appeals for the Fifth Circuit. Petitioner is raising the same issues previously raised in proceeding no. 85-2135 and denied by this Court.

ARGUMENT

This litigation, seeking to challenge a judgment dismissing an appeal from an order denying remand of related proceedings to the state court, constitutes the latest in a long series of efforts by Lavoyd Wayne "Bill" Hardin to harass the Trustee of his estate as well as to waste judicial time and resources by continuing to perfect frivolous and unmeritorious appeals. The judgment which forms the basis for this petition may be found at pages 9-12, Petitioner's Supplemental Appendix.

The United States Code, at 28 U.S.C. §1452 provides that:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power,

to the District Court for the District where such civil action is pending, if such District Court has jurisdiction of such claim or cause of action under Section 1334 of this Title.

(b) The Court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise (emphasis added).

This statute taken alone would appear to eliminate any appeal so long as the District Court had jurisdiction as provided in section (a) thereof. The inquiry is limited therefore to whether the District Court would have had jurisdiction pursuant to 28 U.S.C. §1334 as it denied remand.

28 U.S.C. §1334 among other things, provided:

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

The proceeding that is the subject of the appeal on its face shows that it is a claim of misapplication of property by a trustee. Such property being property of the estate subject to District Court exclusive jurisdiction as provided under 28 U.S.C. §1334(d).

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate."

The District Court had jurisdiction and the elements necessary under 28 U.S.C. §1452(a) were satisfied. The appeal,

therefore, does not lie and the decision by the Bankruptcy Court not to remand is not reviewable by appeal. This was recognized by the United States District Court for the Northern District of Texas when it denied Appellant's appeal of the Bankruptcy Court's Order of April 11, 1986, in accordance with 28 U.S.C. §1452(b), as well as by the United States Court of Appeals for the Fifth Circuit when it denied petitioner's appeal of the District Court's Order of July 16, 1986, in accordance with 28 U.S.C. §1452(b).

The petition for certiorari should be denied as the petitioner has not raised any issues germane to the order appealed. Respondent would show that the twenty-four (24) questions presented for review are moot.

The petition for certiorari should further be denied as petitioner is

raising stale, unsuccessful appeals in conjunction with those alleged to form the basis for this petition. The petition for certiorari is only timely with respect to the orders of July 16, 1986 denying remand by the U.S. District Court pursuant to 28 U.S.C. §2101(c).

Petitioner claims that he has been denied his constitutional right to the assistance of counsel for his defense. Petitioner cites only criminal case authority for this proposition, and fails to recognize that no such right obtains in civil litigation. Furthermore, petitioner was represented by counsel in his voluntary petition under the Bankruptcy Code and was represented by counsel in Appeal No. 84-1037 in the Fifth Circuit. Petitioner then dismissed his bankruptcy counsel and voluntarily elected to repre-

sent himself in these proceedings. Petitioner's claim that he was denied counsel relates to a proceeding to which he was not a party and which proceeding was appealed to the Fifth Circuit. Case No. 84-1396 was dismissed as moot and no writ was filed in this court.

Respondent would show that the twenty-four (24) questions presented for review by petitioner were addressed and rejected by the United States Court of Appeals for the Fifth Circuit in one or more of the aforementioned appeals, which raised issues either identical to or similar to those set forth by petitioner in the petition for certiorari.

Respondent would show that the questions presented for review are the same questions presented for review in Cause No. 85-2135, petition for writ of

certiorari in the Supreme Court of the United States, October Term, 1986 and which were rejected by this Honorable Court when it denied the prior petition for writ of certiorari.

Respondent would show that the petitioner has therefore not raised any issues germane to the judgments appealed, but is using the petition for certiorari in an effort to bring before this court matters heretofore decided adversely to petitioner by the United States Court of Appeals for the Fifth Circuit. The petition for certiorari should, therefore, be denied.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

By: 

Joseph Colvin

1035 InterFirst Tower
801 Cherry Street
Fort Worth, Texas 76102

Telephone (817) 336-7883
State Bar No. 04631000

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing have been served on all counsel of record, by mailing sets of same, on this 10th day of March, 1987.


Joseph Colvin